

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA,) MOTION IN REQUEST OF COURT'S
PLAINTIFF,) RECONSIDERATION

v.) CASE NO. 1:18-CR-090

JAMES WESLEY BERNARD,)
DEFENDANT) HONORABLE DANIEL L. HOUCAIN

DEFENDANT'S MOTION IN REQUEST OF COURT'S
RECONSIDERATION OF REDUCTION OF SENTENCE PURSUANT
TO THE FSA, 18 USC § 3582(c)(1)(A)(i), AND RULE 59(e)

Now Comes, Defendant And Plaintiff, JAMES WESLEY BERNARD,
APPEARING PRO SE, ON THIS 10TH DAY OF AUGUST, 2020, BY
AND THROUGH THIS MOTION IN REQUEST OF COURT'S RECONSIDERATION
OF REDUCTION OF SENTENCE PURSUANT TO THE FSA, 18 USC
§ 3582(c)(1)(A)(i), AND RULE 59(e), HEREBY HUMBLY AND
RESPECTFULLY REQUESTING THE HONORABLE COURT RECONSIDER
MR. BERNARD'S ORIGINAL REQUEST AND MOTION FOR
COMPASSIONATE RELEASE AND FOR RELIEF OR A REDUCTION
IN SENTENCE FILED WITH THE COURT ON JUNE 1, 2020.

(1)

BASED ON BOTH THE ORIGINAL REASONS CITED FOR RELIEF IN ADDITION TO THE ADDITIONAL AND SUPPLEMENTAL REASONS AS PROVIDED AND DESCRIBED HEREIN:

I. THE COMBINATION OF CIRCUMSTANCES IMPACTING AND INVOLVING MR. BERNARD CONSTITUTE "EXTRAORDINARY AND COMPELLING" CIRCUMSTANCES WARRANTING COMPASSIONATE RELEASE OR A REDUCTION OF SENTENCE.

Mr. BERNARD IS NOT DISPUTING THE FACT THAT THE PRESENCE OR THREAT OF COVID-19 IN A PENAL FACILITY IS NOT EXTRAORDINARY AND COMPELLING REASONS WARRANTING A REDUCTION IN SENTENCE IN AND OF ITSELF, HOWEVER A MORE IN-DEPTH ANALYSIS OF THE CIRCUMSTANCES INVOLVING MR. BERNARD DEMONSTRATE THE NEED FOR THE COURT'S INTERVENTION. MR. BERNARD IS CURRENTLY HELVED AT FCI-ELATON, WHICH BLOWE HAS EXPERIENCED AN EXTRAORDINARY IMPACT FROM COVID-19, AS EVIDENCED BY THE 9 FATALITIES RELATED TO COVID-19 (THE HIGHEST NUMBER IN THE FEDERAL SYSTEM), ALONG WITH THE PERPETUAL HUNDREDS OF POSITIVE TESTS OCCURRING ON A WEEKLY BASIS, AND THE ADMINISTRATION'S AND STAFF'S IGNORANCE TO THE REAL PROBLEM THAT EXISTS. THE VIRUS IS HERE, AND HERE TO STAY AND THE FACT THAT THE ADMINISTRATION HAS MADE THE RESPONSE UP AS THEY WENT ALONG, ALMOST ON A HANKEY BASIS IS THE ULTIMATE SNUB TO CDC GUIDELINES, RECOMMENDATIONS ON DISINFECTION, AND TO THE COURTS THAT HAVE ORDERED ELATON TO RETUR

And Effectively Respond To The immense Impact of COVID-19. The Contaminated, Petri-Like Units Have Not Even Been Cleaned, Let Alone Disinfected. One Day In The Facility Would Demonstrate That All It Is Going To Take Is A Mere Mutation Of The Virus, A Second Wave Of Infections, Or A Seasonal Strain To Occur - All Of Which Experts Concur Will Occur With The Novel Coronavirus, And Things At Elton Will Revert Right Back To Where They Were In April-June. Nothing Has Actually Changed Since The Initial Impact And Subsequent Litigations. The Facility Is A Ticking Time Bomb, And The BOP's "Pandemic Response Plan", Of Which The Government Touts In It's Oppositions, Does NOT Work And The Conditions Under The Surface At Elton Is Perfect Evidence As Such. The "Plan" Is Nothing More Than A Public Relations Ploy To Satisfy Lawmakers, Courts, The Public, And Our Loved Ones. If It Worked, The Hazardous Daily Occurrences At Elton Wouldn't Be What They Are, The Hundreds Of Positive Tests Constantly Wouldn't Exist, And They Would Have Learned From Elton And The Facilities That Are Getting Bombarded Now Wouldn't Be Experiencing The Impact They Are. If Works On Paper, But Applied In Real Life, It's Broken. Finally, No Inmates Have Been Transferred, The Overcrowding Still Exists, There Is No Social Distancing, No Access To Quality PPE, And Other CDC Recommended Protocols For

PROTECTION ARE EITHER INHIBITIVE OR NON-EXISTENT.
WHY CONTINUE TO PLACE MR. BERNARD'S LIFE IN DANGER
ON PENAL AT THE END OF HIS SENTENCE, ESPECIALLY WHEN
TO NO PUNITIVE FAULT OF HIS, HE HAS LOST THE ABILITY
TO RECEIVE § 3621(e) RDAP BENEFITS JUST BECAUSE OF COVID-19'S
IMPACT ON ELECTION. THIS DOESN'T SEEM LOGICAL NOR FAIR.

II. 18 USC § 3553 FACTORS DESERVING ATTENTION

THE FINAL POINTS TO BE CONSIDERED FOR COMPASSIONATE RELEASE
ARE SENTENCING FACTORS SET FORTH IN 18 USC § 3553 (a).
THESE FACTORS LARGELY WEIGH IN DEFENDANT BERNARD'S FAVOR.
UNDER § 3553 (a)(1), THE NATURE AND CIRCUMSTANCES OF THE
OFFENSES WERE UNREMARKABLE AND WERE MR. BERNARD'S FIRST
OFFENSE IN THE FEDERAL SYSTEM. ADDITIONALLY, MR. BERNARD HAS
IMMENSE FAMILY SUPPORT AND A SOLID, VERIFIABLE RELEASE
PLAN INCLUDING PLACES TO LIVE AND WORK.

ADDITIONALLY, MR. BERNARD HAS ARDUIOUSLY ATTEMPTED TO PROGRAM
AND MAKE EFFECTIVE USE OF HIS TIME WHILE INCARCERATED. HE IS
AND WAS AN ACTIVE PARTICIPANT IN THE RDAP PROGRAM AT THE
"PAUSE" DUE TO COVID-19 AT ELECTION, OF WHICH IS STILL PERPETUAL.
DUE TO THIS SUSPENSION, MR. BERNARD HAS LOST THE ABILITY TO
RECEIVE § 3621(e) BENEFITS - NAMELY A REDUCTION OF SENTENCE
TO NO PUNITIVE ACTIONS OF HIS OWN. THIS BECOMES A § 3553(a)(7)
SITUATION - "THE NEED TO AVOID UNWARRANTED SENTENCE DISPARITIES
AMONG SIMILARLY SENTENCED / SITUATED DEFENDANTS". SEE U.S. v. JELLINEK
(4)

No. 15-20312, 2020 WL 3833125 (E.D. Mich. July 8, 2020).

With this, the fact Mr. Bernard has now lost all abilities to receive any RODAP time credit benefits as compared to an identical defendant sentenced 12 months prior sans COVID-19. And an identical defendant sentenced 12 months from now sans COVID-19, is the definition of unfair disparities. It seems fair to say that denying James Bernard his well-earned RODAP reduction and keeping him in COVID-infested Elkton is illogical.

Additionally, an ignored § 3553 (g)(2)(D) - "providing effective correctional treatment" factor also weighs heavily in Mr. Bernard's favor. All programming, education, library, religious services, and recreation are shut down now, have been for months, and will be for the foreseeable future. Mr. Bernard is doing nothing but "dead time" and this "effective correctional treatment" is virtually impossible in 2020 FCI-Elkton in the COVID era; Mr. Bernard would absolutely be a more effective, positive, and productive individual if left to go home and provide for his family, his children, and his community versus being simply warehoused in dangerous, risky, and vile conditions at Elkton.

III. Mr. Bernard is not a danger to any individual nor anyone in his community.

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U.S.S.G. § 1B1.3 ADVISES A DEFENDANT SEEKING COMPASSIONATE RELEASE AND/OR RELIEF NOT BE A DANGER TO THE COMMUNITY NOR ANY INDIVIDUAL. IT IS IMPORTANT TO NOTE THAT THIS ALSO WEIGHS IN MR. BERNARD'S FAVOR. MR. BERNARD DOES NOT HAVE A LENGTHY CRIMINAL RECORD AND THIS IS HIS FIRST FEDERAL OFFENSE. ADDITIONALLY, MR. BERNARD IS NOT VIOLENT IN NATURE, AND ANY OFFENSES THAT WERE EVER COMMITTED LACK ANY VIOLENCE.

FINALLY, IN ECHOING THE GOVERNMENT'S EMPHASIS ON THE "BOP'S (SUPPOSED) EFFORTS TOWARDS MAKING MORE USE OF HOME CONFINEMENT", THIS COURT CAN ABSOLUTELY DIRECTLY ACCOMPLISH THIS BY REDUCING DEFENDANT BERNARD'S SENTENCE TO TIME SERVED AND IMPOSING MANDATORY HOME CONFINEMENT FOR THE FIRST PERIOD OF HIS SUPERVISED RELEASE.

Conclusion

THEREFORE, DEFENDANT JAMES BERNARD RESPECTFULLY REQUESTS THAT THIS COURT GRANT COMPASSIONATE RELEASE AND REDUCE HIS SENTENCE TO TIME SERVED, WITH HOME CONFINEMENT AS A COMPONENT OF SUPERVISED RELEASE BY RECONSIDERING ALL STATEMENTS, FACTS, AND REBUTTALS IN THIS MOTION AND THE PREVIOUSLY-FILED ORIGINAL FILING, PURSUANT TO THE COURT'S ABILITY UNDER RULE 5(e). AS AN ALTERNATIVE, DEFENDANT REQUESTS THAT THIS COURT REDUCE HIS CUSTODY SENTENCE BY ONE YEAR IN ORDER TO ENSURE

CREDIT FOR HIS PARTICIPATION IN THE ROAD PROGRAM,
AND FINALLY THAT THIS COURT REALIZE THAT ALL FACTORS
THAT DEFENDANT HAS RAISED ABSOLUTELY CONSTITUTES
"EXTRAORDINARY AND COMPELLING" CIRCUMSTANCES WHEN
COMBINED, AND WARRANT THE COURT TO RECONSIDER
THE ABOVE RELIEF.

RESPECTFULLY SUBMITTED,

James Bernard

Mr. JAMES BERNARD

DEFENDANT / PRO SE

REG. # 56824-039

FCI-ELKTON

P.O. Box 10

LISBON, OH 44432

CERTIFICATE OF SERVICE

On This 10th Day of August, 2020, I, DEFENDANT JAMES BERNARD, DECLARE A COPY OF THIS MOTION WAS TENDERED TO FCI-ELKTON MAILROOM OFFICIALS WITH PROPER FIRST-CLASS POSTAGE AFFIXED FOR DELIVERY TO: U.S. DISTRICT COURT, ATTIN: CLERK, 220 EAST ROSSER AVE, BISMARCK, ND 58501

James Bernard

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JAMES NESTER BERNARD